

Good morning. My name is Hilary Rosen and I am President and Chief Executive Officer of the Recording Industry Association of America (RIAA). The RIAA is a trade association that represents the interests of the copyright owners of more than 90% of the sound recordings distributed in the United States--from small independent companies like One Little Indian and Jim Henson Records, to the major labels such as Epic, RCA, Capitol, Motown, Warner Brothers and Universal Records. Though disparate in size, our members share a common thread--a fragile existence wholly dependent upon the protection of their intellectual property. This fine filament upon which so much American creativity, ingenuity and commerce rests is under constant strain, and you have before you an unparalleled opportunity to strengthen it.

I am extremely pleased to appear before you today to discuss a subject that is central to the economic fate of the industry that I represent. Artists and record companies have long suffered under an international legal regime that permits overt discrimination against American record companies and performers. Today, by virtue of the treaty which you are presently considering, you have an opportunity to put an end to such unfair treatment, and to simultaneously prepare copyright owners to face the challenges of the 21st century.

After years of intensive and determined bipartisan efforts on the part of both Republican and Democratic administrations, in December of 1996 the World Intellectual Property Organization (WIPO) adopted two treaties designed to establish certain basic

protections for copyrighted works in the digital age. These treaties will, if ratified, effectively require other countries to provide protection in a manner consistent with current U.S. law. While the provisions of these treaties do not represent extensions of the level of copyright protection enjoyed in the United States, they do represent significant and necessary improvements in the international legal structure, and they do contain necessary provisions to enhance our ability to effectively enforce rights in the digital age. These global improvements are critical to the ability of U.S. copyright owners to do business in a global information society.

Global sales of recorded music last year exceeded \$40 billion, and U.S. record companies enjoy the lion's share of this revenue. Last year also marked a turning point in the business operations of U.S. record companies inasmuch as more American music was sold overseas than domestically--a dramatic turnaround for an industry traditionally built on the strength and size of the U.S. market. Creating opportunities for expansion into foreign markets is now a primary imperative to sustain the growth of one of America's most vital and competitive industries.

The ability to sustain this growth is wholly dependent upon achieving adequate and effective copyright protection for our works in foreign markets. While this task has traditionally been fraught with difficulty--witness the well-known piracy problems in China or Mexico--it becomes increasingly more complex with developments in technology that permit the

instantaneous and global distribution of materials with the touch of a button. In a global information network, protection of the creative materials that are such a critical part of this country's economic backbone is only as strong as the weakest link in the information communication chain. Thus, there is an absolute necessity to eliminate existing gaps in the international legal structure that undermine the protection enjoyed by U.S. copyright holders in national and international channels of commerce.

The treaties adopted in Geneva go a long way towards bridging these existing gaps, provided of course that they are ratified by a large number of countries. Achieving broad ratification will require the continuation of the leadership demonstrated by the United States throughout this process. Successful worldwide implementation of these treaties will only take place if you, the Congress, demonstrate leadership by example and thereby provide the necessary tools for U.S. negotiators to encourage broad accession around the world.

Substantively, the treaties accomplish five extremely important economic objectives of the United States. First of all, the treaties make it absolutely clear that copyright holders are able to control the electronic delivery of their works to individual members of the public. This both anticipates and responds to the realities of the electronic marketplace, where copyright owners are likely to rely increasingly on the communication of signals rather than the delivery of physical products to meet consumer demand. This level of copyright protection, in conjunction with technical protections (also dealt with in these treaties), is indispensable to the

willingness of copyright owners to make their works available through these new media. It is important to note that the treaty provisions establishing the scope of copyright protection are entirely consistent with present U.S. law--both with respect to the grant of rights, and limitations on those rights.

Second, the treaties confirm that existing national copyright laws, and the international copyright system, apply in a generalized manner to all technologies and media, and not in a technology specific manner. This has particular relevance with respect to the right of reproduction and its limitations in digital media.

Third, the treaties require countries to effectively prevent the circumvention of technical measures and interference with rights management information used by copyright holders to protect or identify their works. It is widely anticipated that such technical measures and rights management information will play an increasingly important role in the protection and licensing of copyright in the digital age. We concur with the view that technology can play a critical role in solving some of the problems created by technological developments, and that these technological solutions which simultaneously protect intellectual property and foster technological innovation and the expansion of commerce must be protected. A great deal of work is being conducted around the globe to develop technical systems of protection and viable information systems to facilitate the administration of rights. These systems of protection and rights management information, however, will be meaningless unless states

effectively deter and punish acts of circumvention or interference. This treaty will require states to do so, thus establishing key elements of security for global electronic commerce.

Fourth, and most important from the standpoint of record companies, the treaty on phonograms and performances (previously referred to as the "New Instrument") will permit, for the first time, U.S. record companies and performers to share in the revenue generated overseas by the broadcasting and communication to the public of their works in certain instances. At the moment, money generated from the use of American recordings is subsidizing foreign works. In 1995, the U.S. Congress passed the Digital Performance Right in Sound Recordings Act, establishing the right of record companies to authorize interactive and certain other digital transmissions, as well as to be remunerated for subscription services not subject to exclusivity. U.S. record companies and performers have not, however, been entitled to reciprocal protection overseas by virtue of gaps in the existing international legal structure. This treaty fills those gaps. This treaty will, if properly ratified, end at least one element of decades long discriminatory treatment of U.S. interests, and will greatly contribute to the ability of the U.S. music industry to continue to play a leading role in the production of creative materials, and to compete on a more level playing field in the electronic marketplace.

Finally, these treaties put to rest arguments of a number of parties that the United States was prematurely engaged in developing international standards for copyright in a digital

age. The treaties confirm the applicability of basic copyright protections, and carry forth such basic equitable principles governing when nations may limit the application of such rights. Importantly, the treaty does not amend the substantive provisions of U.S. copyright law, and the copyright protection contemplated by the treaty is entirely consistent with existing U.S. copyright law.

H.R. 2281, the legislation before you today, and more specifically, the revised version that passed the Senate last month by a vote of 99-0, responds to the concerns expressed by a number of groups about the anticircumvention and copyright management provisions of the treaty legislation. The measure has been modified to ensure that the rights of creators are balanced with those of users and consumers. Safeguards have been added to provide special treatment to libraries and universities through the inclusion of copyright exceptions and special liability limitations with respect to anticircumvention; language has been included to clarify that the bill does not impose a design mandate for manufacturers; provisions dealing with the importation of devices and Section 337 of the Tariff Act have been deleted; law enforcement has been given broader exceptions under the current bill; computer decompilation has been addressed; parental rights with respect to Internet controls have been secured; broadcasters' traditional practices have been protected; and the list continues.

Another important compromise and significant component of the bill is Title II, which clarifies the liability of online service providers when they transmit or store copyrighted works

over their networks. This section represents an historic achievement in establishing new rules of the Internet road, balancing the legitimate needs and concerns of copyright owners with those of Internet service providers. Most importantly, Title II provides incentives for the online industry to work with copyright owners in the fight against Internet piracy.

In summary, the treaty implementing legislation does not substantively amend U.S. copyright law, either through expansion or contraction of the rights of copyright holders, or limitations on such rights. It implements the treaty provisions on anti-circumvention and rights management information in a minimalist fashion, meeting U.S. obligations without placing impediments to legitimate goods and services. Most in the record industry feel strongly that these provisions should have gone further -- for example by prohibiting the manufacture or importation of devices which had the foreseeable effect of being used to circumvent technological measures used by copyright holders -- rather than, as the legislation provides, only those devices designed or produced for the purpose of circumvention and those that have only limited commercially significant purposes or uses other than circumvention. Nevertheless, in light of the vast economic and foreign policy implications of securing rapid U.S. ratification of the treaties, the RIAA fully endorses the legislation and urges your support to help maintain the position of U.S. creators in the global information society.

Mr. Chairman and members of the Subcommittee, you have before you an unparalleled opportunity to foster and sustain U.S. competitiveness in the coming century in a

sector whose importance to this Nation far exceeds its economic output. Generations of creators and would-be creators are dependent on the wisdom and judgment that you exercise here today. I urge you to move H.R. 2281 without delay, and thereby pave the way for continued U.S. leadership in innovation and creativity. Americans are ready to respond to the challenges of that opportunity.

Thank you.



**STATEMENT OF**  
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**RECORDING INDUSTRY ASSOCIATION OF AMERICA**

**before the**

**Subcommittee on Telecommunications, Trade  
and Consumer Protection**

**of the  
Commerce Committee**

**U.S. House of Representatives**

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